

IN THE SENATE OF THE UNITED STATES.

JUNE 4, 1858.—Ordered to be printed

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 435.]

The Committee on Claims, to whom was referred the petition of James T. V. Thompson, report:

This claim was examined by the Committee on Claims at the last Congress, who made a favorable report, accompanied by a bill, which passed the Senate, but failed to receive the final action of the House of Representatives.

The committee concur in the statement of facts as found in the former report, hereto annexed, and are of opinion that the claimant is entitled to have refunded to him the amount which he lost in consequence of the unsoundness of the flour, and report a bill accordingly.

IN THE SENATE OF THE UNITED STATES, May 9, 1856.

The Committee on Claims, to whom was referred the petition of James T. V. Thompson, report:

From the papers in this case it appears that, by order of the commissary of subsistence, a sale of about 1,000 bags of flour was advertised on July 25, 1851, to take place on the 16th of August following, at Fort Leavenworth. The advertisement represented the flour to be "in good order and perfectly sweet." On the said day the petitioner purchased 405 sacks, at \$1 95 per sack, amounting to \$789 75. After the flour was delivered and paid for, it was ascertained, as is alleged, to be sour and unfit for use, and was afterwards sold by the petitioner for the best price he could get, and netted him about forty cents per sack, subjecting him to a loss of \$627 75, which he asks to have reimbursed.

The persons to whom the flour was consigned certify to its being sour and unfit for use.

Amongst the testimony is the affidavit of D. B. Martin, who deposes that he was present at the sale, and became the purchaser of 140 sacks

of the same lot of flour, which proved to be sour, as ascertained a few days subsequently; and further, "that he was present at a sale at the same place, a few weeks after the first sale, and after the unsoundness of the flour had been ascertained, when the residue of the same stock was sold, and that the price obtained was about an average of thirty-five or forty cents a sack."

The claim for a reimbursement of the purchase money was submitted to the accounting officers and disallowed, on the grounds that it was not proved that the flour was not sound at the time of sale, and that the advertisement contained no warranty of soundness to the purchaser; and further, if these facts were admitted, that they had no jurisdiction of the matter.

The committee think that, under all the circumstances of the case, the assurance in the advertisement that the flour was "*in good order and perfectly sweet*," may be regarded as a warranty to the purchaser that it would be delivered to him in that condition. Then the question arises, was it so delivered? Upon this point the evidence is not so direct and definite as to the time when the discovery of its unsoundness was ascertained, and as to the extent of the damage, as could be desired; yet the certificates of the consignees, the testimony of Mr. Martin, and the fact that the residue of the flour was sold a few weeks after at a greatly reduced price, tends to sustain the allegation of the claimant.

In view of all circumstances, the committee have come to the conclusion to report the accompanying bill, authorizing one-half of the purchase money paid for the flour to be reimbursed to the petitioner.

The petitioner presents a further claim of \$277 20 for beef cattle lost *en route* to Bent's Fort.

It appears that in 1846 Mr. Thompson, in pursuance of a contract to that effect, delivered to the assistant commissary of subsistence at Fort Leavenworth 200 head of beef cattle, for which he received the price agreed on, to wit: three cents per pond. The cattle not being wanted at that point, he entered into a further contract to deliver the same cattle at Bent's Fort for one and a half cent per pound additional. He accordingly united them with another drove of about 500 head on their way to the same point. On their arrival at Bent's Fort, it was found that forty-two head had been lost after the union of the two droves, and he asks that the government assume the proportionate loss on the 200 head, amounting to the sum claimed as stated above, he having been required by the officer at Bent's Fort to deliver the full number belonging to the government.

This claim was submitted to the accounting officers in April, 1854, and they, after a full revision of the facts, decided that "the claimant's contract was completed and ended when he delivered the cattle and received the pay agreed on for their delivery, and he cannot be allowed, seven years after the transaction, to vary its terms so plainly set forth by the evidence he has produced."

The committee concur in this decision of the accounting officers.